

*** THE HON'BLE Mr. JUSTICE B. SUDERSHAN REDDY**

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AND

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*** THE HON'BLE Mr. JUSTICE S. ANANDA REDDY**

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+ W.P. No.3900 of 2005 AND BATCH

% Dated 03-11-2005

M/s. Andhra Pradesh Power Generation

Corporation Ltd.,

Rep. by its Company Secretary Mr. G. Adinarayana

... Petitioner

Vs.

\$ The Assistant Commissioner of IncomeTax

Circle – 14(2), 2nd Floor, Ayakar Bhavan,

Basheerbagh, Hyderabad & another

... Respondents

! Counsel for the Petitioner: Mr. Ravi S.

^ Counsel for the Respondents: J.V. Prasad, St. Counsel for I.T. Dept.

< GIST:

> HEAD NOTE:

? Cases referred

1) 1992 Supp (2) SCC 432

2) 1995 Supp(4) SCC 541

3) (2004) 6 SCC 437

4) (1999) 9 SCC 181

5) (2001) 1 SCC 43

6) 267 ITR 2004, 647

7) 2003 (3) SCC 472 = AIR 2003 SC 1805

8) (1994) 3 SCC 1

9) 259 ITR 2003, 686

10) 274-1 ITR 2004, 35

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THE HON'BLE Mr. JUSTICE B. SUDERSHAN REDDY

And

THE HON'BLE Mr. JUSTICE S. ANANDA REDDY

W.P. No.3900 OF 2005

DATE: 03-11-2005

BETWEEN:

M/s. Andhra Pradesh Power Generation
Corporation Ltd.,
Rep. by its Company Secretary Mr.G. Adinarayana
S/o.Mr. G. Ramanna, aged about 43 years,
Vidyut Soudha, Khairtabad, Hyderabad.

.. Petitioner

AND

The Assistant Commissioner of Income Tax,
Circle – 14(2) 2nd Floor, Ayakar Bhavan,
Basheerbagh, Hyderabad & another

.. Respondents

THE HON'BLE Mr. JUSTICE B. SUDERSHAN REDDY

And

THE HON'BLE Mr. JUSTICE S. ANANDA REDDY

W.P. No.3900 OF 2005

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AND

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I.T.T.A. Nos.215 AND 216 OF 2005

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COMMON ORDER: (Per Hon'ble Mr. Justice B. Sudershan Reddy)

W.P. No.3900 OF 2005:

In **Oil and Natural Gas Commission and another v. Collector of Central Excise**, the Supreme Court expressed its reservation for the manner in which the Central Government and its public sector undertakings were fighting their litigation in the Courts by spending money and wasting public time. The Supreme Court accordingly directed the Cabinet Secretary to handle the matter and report to the Court as to why the litigation is being conducted “when the two sides are a public sector undertaking and the Union of India.” It was a dispute between Oil and Natural Gas Commission and the Collector of Central Excise. The dispute was regarding excise duty on lean gas supplied to consumers ex-Uran.

Respecting the Court order, dated 11-09-1991, the Cabinet Secretary has taken appropriate initiative and has reported to the Court that the dispute between the Government Department and the public sector undertaking of the Union of India has been settled. In his report submitted to the Court, the Cabinet Secretary has stated:

“I would also like to state that the Government respects the views expressed by this Honourable Court and has accepted them that public undertakings of Central Government and the Union of India should not fight their litigation in Court by spending money on fees on counsel, court fees, procedural expenses and wasting public time. It is in this context that the Cabinet Secretariat has issued instructions from time to time to all Departments of the Government of India as well as to public undertakings of the Central Government to the effect that all disputes, regardless of the type, should be resolved amicably by mutual consultation or through the good offices of empowered agencies of the Government or through arbitration and recourse to litigation should be eliminated.”
(emphasis is of ours)

The Supreme Court having taken the report of the Cabinet Secretary on record further directed the Government of India to set up a Committee consisting of representatives from the Ministry of Industry, the Bureau of Public Enterprises and the Ministry of Law, to monitor disputes between Ministry and Ministry of Government of India, ministry and public sector undertakings of the Government of India and public sector undertakings in between themselves, “to ensure that no litigation comes to Court or to a Tribunal without the matter having been first examined by the Committee and its clearance for litigation.....the Committee shall function under the ultimate control of the Cabinet Secretary but his delegate may look after the matters.”

The Supreme Court further observed, that it shall be the obligation of every Court and every Tribunal where such a dispute is raised to demand a clearance from the Committee in case it has not so pleaded and in the absence of the clearance, the proceedings would not be proceeded with. (**See: Oil and Natural Gas Commission v. C.C.E.**)

In **Oil & Natural Gas Commission v. Collector of Central Excise**, the Supreme Court, referring to its earlier orders, felt some clarifications were required to be issued so that some misconceptions arising out of the memo of the Cabinet Secretary referred to hereinabove are removed.

In the course of issuing such clarification, the Court observed, “the purpose of setting up this High-Powered Committee was to ensure that, as far as possible, the controversies between a Ministry and a Ministry of the Government of India, a Ministry and a public sector undertaking of the Government of India and between public sector undertakings themselves are resolved by recourse to the High-Powered Committee and that time-consuming and expensive litigation is

avoided.”

It is not necessary for the purpose of disposal of this writ petition to refer in detail the clarifications issued. Suffice it to note, the orders of the Supreme Court referred to hereinabove were in the matter of setting up and functioning of the ‘High-Powered Committee’ for resolving the disputes between the Union of India on the one hand and its public sector undertakings on the other, by recourse to the

‘High-Powered Committee’. The context in which, the orders came to be passed, was the dispute raised by the Oil and Natural Gas Commission against the Collector of Central Excise in the matter of payment of excise duty. The dispute itself had arisen between one of the Departments of the Central Government and a public sector undertaking of the Central Government.

In **Collector of Central Excise, Calcutta v. Jeasop and Co. Ltd.**, the Supreme Court did not entertain the appeal preferred by the Collector of Central Excise on the ground, the litigation between the Central Government and the public sector undertakings is not to be resorted to without the matter being examined by a ‘High-Powered Committee’ of Secretaries and with its clearance. The Court observed, “the course indicated in the orders passed by the Supreme Court in **Oil and Natural Gas Commission Cases** (Supra 1 to 3) has to be adopted by the Revenue.” The Supreme Court declined to entertain the appeal and the appeal was accordingly disposed of.

In **Canara Bank v. National Thermal Power Corporation and another**, the Supreme Court having referred to the orders passed in **Oil and Natural Gas Commission Cases** (Supra 1 to 3), made it clear that “what the Court has

directed in **ONGC Case** (Supra 2) is that frivolous litigation between government departments and public sector undertakings of the Union of India should not be dragged in the courts and be amicably resolved by the Committee. The judgment is intended to prevent avoidable litigation between the government departments and the undertakings of the Union of India. There is no room for any further clarification. The Court intended to put an end to frivolous and *inter se* disputes between the government departments as well as the disputes between public sector undertakings among themselves and the dispute between the public sector undertakings and various departments of the Government of India. In none of the orders passed were with regard to dispute between public sector undertakings of the State Government and the departments of the Central Government. The Committee of Disputes in Cabinet Secretariat is not intended to be a dispute resolution mechanism to resolve the disputes between the public sector undertakings of the State Governments and the Departments of the Central Government.

In **Mahanagar Telephone Nigam Ltd. V. C.B.D.T.**, the Mahanagar Telephone Nigam Limited (for short 'MTNL'),

a public sector company, challenged the notice of reassessment under Section 148 of the Income Tax Act, 1961 for the assessment year 1994-95. The matter was referred to the 'High-Powered Committee' from which clearance has to be obtained for litigation by public sector bodies or government departments of the Central Government. The Committee resolved that since MTNL was contemplating a writ petition against a show cause notice, it was advised to await the appealable order and accordingly did not permit filing of a writ petition in the High Court. The MTNL, however, filed writ petition challenging the notice and the High Court dismissed the same on merits. On appeal, by Special

Leave, the Supreme Court held that as the 'High-Powered Committee' had not given clearance to the MTNL, the proceedings could not be proceeded with. It is required to notice that the dispute was again between one of the public sector undertakings of the Government of India and the Revenue Department of the Government of India.

In **Chief Conservator of Forests v. Collector**, the Supreme Court, in the context of litigation between the Forest Department and the Revenue Department of Government of Andhra Pradesh, observed that it was not contemplated by the framers of Constitution that two departments of a State or the Union of India will fight a litigation in a Court of law. It is neither appropriate nor permissible for two departments of a State or the Union of India to fight litigation in a Court of law. "Such a course cannot but be detrimental to the public interest as it also entails avoidable wastage of public money and time. Various departments of the Government are its limbs; therefore, they must act in co-ordination and not in confrontation. The Supreme Court having noticed that in cases of dispute between public sector undertakings and the Union of India, the Court in **Oil and Natural Gas Commission cases** (Supra 1 to 3) directed the Central Government to set up a Committee consisting of representatives to monitor disputes between Ministry and Ministry of the Government of India, Ministry and public sector undertakings in between themselves, to ensure that no litigation comes to court or to a Tribunal without the matter having been first examined by the Committee and its clearance for litigation and further having found that no such similar committee or mechanism was available to resolve the controversy arising between various departments of the State or the State and any of its undertakings observed,

".....it would be appropriate for the State Governments to set up a Committee consisting of the Chief Secretary of the State, the Secretaries of the concerned departments, the Secretary of Law and where financial

commitments are involved, the Secretary of Finance.”

In none of the cases referred to hereinabove, the disputes were between the Central Government and the State Government or between public sector undertakings of the State Government and the Central Government or between public sector undertakings of the State and the public sector undertakings of the Central Government. It is thus clear, there is no ‘High-Powered Committee’ constituted for resolution of any dispute between the Central Government and the State Government or between the public sector undertakings of the State Government and public sector undertakings of the Central Government or between one Department of the Central Government and the State Governments or between the departments of Central Government and the departments of the State Government. Obviously, no such ‘High-Powered Committee’ could have been constituted by the Central Government to resolve the disputes between the Central Government and the State Governments, for which purposes, Constitution itself provides mechanism as well as the Forum for resolution of such disputes.

It is not possible – nor is it necessary – for our present purposes to make any detailed analysis as regards the nature of Indian Federation with reference to its historical background, the distribution of legislative powers, financial and administrative relations etc. It is enough to note that notwithstanding the fact that there are many provisions in the Constitution whereunder the Centre has been given the powers to override the States, “our Constitution is a federal Constitution. It means that the States are sovereign in the field which is left to them. They are neither satellites nor agents of the

Centre.” (See: **S.R. Bommai v. Union of India**)

The disputes between the Centre and the State are required to be resolved in accordance with the provisions of the Constitution, which provides the mechanism as well as the Forum for resolution of all such disputes. There is no Forum, as such, created or constituted by the Central Government to resolve the disputes between the State Government public sector undertakings on the one hand and the departments of Central Government on the other. Nor there is any mechanism or Forum created and constituted for resolution of disputes between the State Government public sector undertakings and the Central Government public sector undertakings.

The Rajasthan high Court in **State of Rajasthan v. income-Tax Appellate Tribunal and another** and the Delhi High Court in **Commissioner of Income-Tax v. Delhi Tourism and Transportation Development Corporation Limited**, obviously, did not properly appreciate the ratio laid down by the Supreme Court in **Oil and Natural Gas Commission Cases** (Supra 1 to 3). We are not inclined to agree with the view taken by the Rajasthan and the Delhi High Courts in the said decisions.

In this Writ Petition, the petitioner is a State Government Undertaking, which came into existence with effect from 01-02-1999 after the restructure of erstwhile Andhra Pradesh State Electricity Board. The dispute between the petitioner and the Income Tax Department relates to the applicability of the provisions of Section 195 of the Income Tax Act 1961 about which we are not concerned for the present in this writ petition. The 1st respondent has determined the tax payable by the petitioner by grossing up all the amounts

under Section 195A of the Income Tax Act as against which the petitioner preferred appeals before the Commissioner of Income Tax (Appeals) – V, Hyderabad, who has passed a common order partly allowing the appeals holding that the petitioner was under obligation to deduct tax with respect to payments made to Sumitomo Corporation. The petitioner filed appeals before the Income Tax Appellate Tribunal against the orders of the Commissioner on various grounds. The petitioner obtained stay of collection of disputed tax and interest on 14-02-2003 from the Tribunal subject to certain conditions. The appeals were heard by the Appellate Tribunal and the arguments were concluded on both the sides on 05-01-2004. The parties were directed to file written submissions, which they did. The Tribunal instead of pronouncing the orders on merits re-opened the appeals as part-heard for the purpose of considering the issue as to whether the petitioner required the permission of “Committee of Disputes”. That after hearing the parties, the Appellate Tribunal held that the matter has to be referred to the Committee of Disputes and accordingly dismissed the stay petitions in *limine* with further observation that the appeals preferred by the petitioner cannot be admitted.

The view taken by the Appellate Tribunal is vitiated by errors apparent on the face of the record. The Tribunal misdirected itself in applying the decisions of the Supreme Court in **Oil and Natural Gas Commission Cases** (Supra 1 to 3). The Tribunal committed a grave error in passing the impugned order instead of disposing of the appeals on merits. The impugned order is unsustainable in law and the same is accordingly quashed.

The Tribunal is accordingly directed to dispose of the appeals on merits as expeditiously as possible preferably within a period of three months from the

date of receipt of a copy of this order. The petitioner shall continue to have the benefit of the interim arrangement until final disposal of the appeals by the Tribunal.

With the observations as above, the Writ Petition is allowed. There shall be no order as to costs.

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I.T.T.A. Nos.215 AND 216 OF 2005

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For the very same reasons, we hold the principle of clearance from the Committee of Disputes enunciated by the Supreme Court in **Oil and Natural Gas Commission Cases** (Supra 1 to 3) is not applicable to the disputes arising between the Income Tax Department (Union of India) and the undertakings owned by the State Governments.

The appellate Tribunal is not justified in holding that prior clearance from the Committee of Disputes as mandatory requirement for entertaining the appeal at the instance of the Income Tax Department against the undertaking owned by the Government of Andhra Pradesh.

The impugned orders are accordingly set aside and the appeals are accordingly allowed.

In the result, I.T.A. Nos.14 and 15 of 2004 shall stand restored to their original file on the file of the Income Tax Appellate Tribunal for their disposal on

merits, in accordance with law. The appeals shall be disposed of within a period of three months from the date of receipt of a copy of this order. Each party shall bear their own costs.

B. SUDERSHAN REDDY, J

Date: _____ Nov., 2005.

S. ANANDA REDDY, J

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NOTE:

- 1) L.R. Copy to be marked.
- 2) Furnish C.C. of the order by 07-11-2005.

(B/O)

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